

LFC Requester:	Christine Boerner
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AGENCY BILL ANALYSIS  
2016 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:

Original ☒ Amendment ☒

Correction ☐ Substitute ☐

Date 2/10/2016

Bill No: HB 201

Sponsor: Rep. Deborah Armstrong

Agency Code: 305

Short Medicaid False Claims Changes

Person Writing Patricia Padrino Tucker

Title: \_\_\_\_\_

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

### **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

**Synopsis:** HB 201 amends the Medicaid False Claims Act to bring it into compliance with guidance from the federal Department of Health and Human Services (HHS) Office of Inspector General (OIG) providing for incentives if states mirror the language of the Federal False Claims Act. The amendments would allow NM to retain an additional 10% in recoveries made under the Act. These amendments include provisions: establishing liability to the state for false or fraudulent claims as described in the Federal False Claims Act; providing for the effective means of rewarding and facilitating qui tam actions; containing a requirement for filing an action under seal for 60 days with review by the State Attorney General; and containing a civil penalty that is not less than the amount of the civil penalty authorized under the FCA.

Additional amendments to the Medicaid False Claims Act include the insertion of a provision allowing for civil investigative demands, a provision which allows for attorneys' fees, and the granting of authority for the of the Office of the Attorney General to litigate cases under the Act.

HB 201 also amends the Fraud Against Taxpayers Act to allow for civil investigative demands, and attorneys' fees to fund the staffing of whistleblower cases handled by the Office of the Attorney General. It also clarifies the definition of public disclosure of the elements of a false or fraudulent claim.

#### **FISCAL IMPLICATIONS**

The enactment of HB 201 would actually allow the state to retain an additional 10% of all Medicaid money recovered under the Act. Presently, the federal government shares in NM's recoveries in the same proportion as the FMAP, approximately 75% to the federal government and 25% to the state. The federal government has provided an incentive for states to bring their false claims statutes into compliance by allowing states to retain an additional 10% of recoveries, bringing NM's share to 35% with the amendments.

Additionally, allowing attorneys' fees collected in successful actions assists in funding the personnel to successfully handle whistleblower cases, taking a burden off the general fund.

## **SIGNIFICANT ISSUES**

The amendments bring the Medicaid False Claims Act into compliance with federal guidelines allowing the state to retain an additional 10% of recoveries made under the Act. The Act as amended has passed informal review with HHS OIG. No substantive changes can be made to the present form of the Act without the risk of losing HHS OIG approval.

## **PERFORMANCE IMPLICATIONS**

None.

## **ADMINISTRATIVE IMPLICATIONS**

None.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

## **TECHNICAL ISSUES**

None.

## **OTHER SUBSTANTIVE ISSUES**

None.

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Until NM comes into compliance with federal guidance by HHS OIG, it will be unable to take advantage of the financial incentive allowing the state to retain an additional 10% of recoveries.

## **AMENDMENTS**

None.